IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5900 of 1988

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

N.V.VANKAR,OFFICER, BANK OF BARODA

Versus

BANK OF BARODA (NOTICE TO BE SERVED UPON)

Appearance:

1. Special Civil Application No. 5900 of 1988

MR ANKUR OZA for MR TS NANAVATI for Petitioner No. 1

MR DARSHAN M PARIKH for Respondent No. 1-2

MR BHARAT J SHELAT for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 29/03/2004

ORAL JUDGEMENT

1. This petition has been filed to challenge the

order of dismissal passed against petitioner dated 13th August, 1988 by respondent no. 1 and also for seeking incidental reliefs.

1.1. According to the petitioner, he was appointed vide order dated 27th May, 1978 by the Deputy General Manager of the Bank of Baroda (hereinafter referred to as 'the Bank') and was directed to report to the Assistant General Manager of the Bank in the Zonal Office at Baroda. By order dated 6th June, 1979 he was appointed as the Officer in the Bank. It appears that the Bank had found certain acts of misconduct having been committed by the petitioner and hence it issued order of dismissal from service on 30th November, 1985 in pursuance to the power conferred upon the competent authority under Regulation 20(1) of the Bank of Baroda (Officers') Service Regulations, 1979 (hereinafter referred to as 'the Regulations'). The dismissal was to take effect immediately since in lieu of the requisite notice, three months' pay was paid to him. The petitioner having been aggrieved by the said order, approached Civil Court by filing Regular Civil Suit No. 710/1985 at Godhra. Ultimately the suit became infructuous in view of the fact that no decision in the appeal which was preferred against order vacating the interim relief was taken till the year 1986. In the order passed in appeal the status-quo was restored by the appellate Court. However, it was made clear that the Bank was at liberty to proceed against the petitioner as per the procedure laid down under the Bank of Baroda (Officers'/Employees' Discipline and Appeal) Regulations, 1976 [hereinafter referred to as 'the Regulations of 1976'], if it so desired.

1.2. The Bank on 22nd August, 1987 issued Memorandum with a view to initiate departmental proceedings in accordance with sub-regulation (2) of regulation 5 read with regulation 6 of the Regulations of 1976. The petitioner was served with the articles of charge dated 22nd August, 1987. The same has been annexed in this petition at Annexure-C. It shows that inall 11 charges were levelled against him. It was accompanied by statement of allegations. Perusal of these documents shows that some of the charges pertained to his integrity and honesty as well as his character and total indifference shown to his duties. Charge no. (iii) pertained to demand and acceptance of illegal gratification directly or indirectly. In charge no. (iv) it was alleged that he indulged into acts of depravity and wickedness of character. Charge no. (vii) pertained to his acting otherwise than his best judgment while discharging his duties and charge no. (viii), (ix)

and (x) pertained to behaving in a manner unbecoming of a Bank Officer and flouting of the rules and regulations of the Bank. The petitioner was called upon to submit his reply to the said allegations. The Bank also appointed Inquiry Officer before whom the proceedings were conducted. Upon conclusion of the inquiry proceedings, the Inquiry Officer came to the conclusion that except charges nos. (i), (v) and (vii), rest of the charges were proved. The report of the Inquiry Officer dated 26th April, 1988 shows that the serious charges with regard to acceptance of illegal gratification, committing the acts of depravity including rape are all proved. Ultimately the inquiry report alongwith all other relevant material was placed before the Disciplinary Authority for taking appropriate action. On going through the material and the Inquiry Officer's report, the Disciplinary Authority thought it fit to dismiss the petitioner from service and thereafter, after complying with the necessary procedure passed the impugned order.

1.3. It may be noted here that against such decision appeal has been provided for under the Regulations. However, the petitioner has directly approached this Court in view of the controversy that was then prevailing with regard to making available to the delinquent copy of the report of the Inquiry Officer. It no more survives, but now that the matter has already been admitted and is pending all these years, it will not be worthwhile to direct the petitioner to go to Appellate Authority even when that alternative remedy is available to him.

2. Mr. Ankur Oza, learned advocate appearing for Mr. T.S. Nanavati for the petitioner has mainly raised two contentions. According to him, the impugned order of dismissal is not valid because it has been passed by the authority lower than the appointing authority. He has submitted that the appointment of the petitioner was made by the Deputy General manager of the Bank, whereas the impugned order has been passed by the Assistant General Manager of the Bank, which is a subordinate authority of the Deputy General Manager. Thus, according to him, there is no compliance with the provisions of Article 311(1) of the Constitution of India. He has further submitted that the report of the Inquiry Officer suffers from inherent infirmities such as, it has been passed without application of the mind and secondly that no reasons have been assigned for reaching the conclusions in respect of the charges. His third submission is that the charges levelled against the petitioner are of quasi criminal nature and, therefore, the Bank was required to establish each charge beyond any reasonable doubt. That

has not been done and, therefore, the report of the Inquiry Officer and the impugned decision taken on the basis thereof cannot stand. Mr. Oza has in support of his contentions, placed reliance on the decisions of the Apex Court rendered in the case of Krishna Kumar v. Divnl. Asstt. E.E., Central Railway reported in AIR 1979 S.C. page 1912 and in the case of H.V. Panchaksharappa v. K.G. Eshwar reported in AIR 2000 S.C. 3344.

2.1. As against that, Mr. D.M. Parikh, learned advocate appearing for the respondent has submitted that even if it is construed that the Assistant General Manager is authority lower than the Deputy General Manager, he has been duly empowered by the Regulations of 1976 to act as Competent Authority in relation to all Officers of the rank of the petitioner. He has further submitted that the Bank's service not being a civil service under the State or the Union Government, Article 311(1) of the Constitution of India will not apply. It is further submitted that during the entire proceedings which had been conducted by the Assistant General Manager, who had even issued notice and at no point of time any objection was raised by the petitioner to this and, therefore, he now cannot raise contention to challenge the competence of the Assistant General Manager. Lastly he has submitted that all the serious allegations/charges that have been levelled against the petitioner are duly proved and considering the nature of those charges, the Disciplinary Authority was well within his bounds to pass order of dismissal against the petitioner.

3. Having gone through the record of the petition and having carefully considered the rival submissions, it clearly appears that while functioning an officer of the Bank, the petitioner had indulged into several acts which under the aforesaid Regulations amounted to acts of misconduct. It also appears that some of the charges levelled against him are quite serious and when such serious charges are proved, the order of dismissal would be the only order that could be passed against him. So far the first submission of Mr. Oza challenging the impugned order that it has been passed by the authority lower to the appointing authority is concerned, it cannot be sustained. It may be noted that service of the Bank cannot fall within the purview of the provisions of Article 311 (1) of the Constitution of India, as the said provisions pertain to the civil service under the State and Union Government. Further that the aforesaid Regulations have statutory force, which have been framed

under the provisions of section 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and those Regulations have been framed with a view to govern the service conditions of the officers and other employees of the Bank. By virtue of the said Regulations in relation to officers of the category of the petitioner the Competent Authority has been determined as Deputy General Manager and the Assistant General Manager. The present order has been passed by the Assistant General manager in exercise of the power conferred upon him by virtue of the aforesaid Regulations. Therefore, it is very clear that he was the officer competent to pass the order. The impugned order, therefore, cannot be held to be invalid on the ground of noncompliance of provisions of Article 311(1) of the Constitution of India. Mr. Oza has placed reliance on the decision rendered in the case of Krishna Kumar (supra). However, the facts of that case clearly reveal that the concerned person belonging to the civil service under the Union Government and in his case the Apex Court has said that even if the authority lower to the appointing authority is subsequently conferred power to act as Competent Authority, he cannot pass the order of dismissal since the position that prevailed at the time of appointment of the concerned person has to be kept in view and not the subsequent development. There cannot be any dispute with regard to this proposition of law. However, the provisions of Article 311 (1) of the Constitution of India would not come into play. The Regulations having statutory force would govern the field, the Competent Authority, namely, Assistant General Manager could pass the impugned order.

3.1. So far the second submission of Mr. Oza that the Inquiry Report suffers from inherent infirmities is concerned, it cannot be accepted because perusal of the said report shows that the Inquiry Officer has adequately reproduced the evidence adduced before him during the course of inquiry and has applied his mind to such evidence to form his own conclusion. May be that he has not elaborately set-out the discussion while appreciating evidence. There is ample indication in the report itself that on all the counts the Inquiry Officer has properly considered the evidence and after applying his mind, has come to the conclusion in respect of the charges levelled against the petitioner. Further Mr. Oza's contention is that charges ought to have been proved beyond reasonable doubt cannot be accepted because this is a departmental inquiry wherein the provisions of the Evidence Act and other procedural law do not strictly apply. There are hundreds of cases which we have come across, wherein

inspite of the acquittal in the criminal prosecution, the departmental inquiry is permitted to be held and the decision is taken on the material that is brought before the Inquiry Officer. Mr. Oza's reliance on the decision of the Apex Court rendered in the case of H.V. Panchaksharappa (supra) will not help him much because in that case the allegation was levelled against a lawyer and the charge of professional misconduct was in the nature of quasi-criminal charge, the inquiry that was held by the State Bar Council, which is also quite different from the inquiry which was held in the present case where such strict proof, namely principle of establishment of the charges beyond reasonable doubt was not required. Further the concerned officer i.e. petitioner is alleged of committing act of depravity such as rape and also acceptance of illegal gratification. In my opinion, the decision of the Disciplinary Authority in dismissing the petitioner from the service was just and proper. In view of the aforesaid, there is no merit in this petition and it is ordered to be dismissed. Rule discharged with no order as to costs.

[AKSHAY H. MEHTA, J.]

* Pansala.